

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

DUANE BULL,

Plaintiff,

v.

VIRTUAL SOFTWARE
SYSTEM, INC.,

Defendant.

CIVIL ACTION FILE NO.

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff, Duane Bull, by and through undersigned counsel, The Kirby G. Smith Law Firm, LLC, and hereby files this Complaint against Virtual Software System, Inc. (“Defendant”), and states as follows:

I. JURISDICTION AND VENUE

1. This is an action for unpaid overtime under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”).
2. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over Count I of this Complaint, which arises out of the FLSA.
3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337 over

Count II of this Complaint, which arises out of the same transaction or occurrence as Count I of this Complaint.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

II. PARTIES

5. Plaintiff is a citizen of the United States and a resident of Dawson County, Georgia.

6. Defendant is a Domestic Profit Corporation doing business in the state of Georgia, with a principal office located at 715 Browns Bridge Rd., Gainesville, Georgia 30506.

7. This Court has jurisdiction over the parties because a substantial portion of the employment practices described herein were committed within the Gainesville Division of the Northern District of Georgia.

8. Defendant may be served by delivering a copy of the Complaint and Summons to its Registered Agent, Richard Luke Bourgeois, 7715 Browns Bridge Road, Gainesville, Georgia 30506.

9. Defendant is subject to the requirements of the laws enumerated in the Jurisdiction and Venue section of this Complaint.

III. FACTUAL ALLEGATIONS

10. Plaintiff was employed by Defendant in Maintenance from 1994 until his termination on December 19, 2019.

11. During all times relevant to his claims, Plaintiff reported to Ms. Julia (“Judy”) Zynko, Office Manager and Chief Financial Officer.

12. Plaintiff also reported to a series of company owners, the most recent of which being Mr. Richard Luke Bourgeois, Owner and Chief Executive Officer.

13. As of 2012, and until his termination, Plaintiff lived on-property, at 7715 Browns Bridge Road, Gainesville, Georgia 30506.

14. Plaintiff received no disciplinary actions or negative performance evaluations from Defendant prior to his termination.

15. In the early 2000’s, Defendant started an employee loan program, used by Plaintiff and other company employees.

16. Plaintiff took three (3) loans out from Defendant in total, in the years 2006, 2007, and 2012.

17. The loans taken out by Plaintiff amounted to approximately \$12,000.00 total.

18. Defendant was to recoup the loan amount by taking money out of Plaintiff’s

paycheck.

19. While Plaintiff felt that the company was deducting more from his paychecks than had been loaned to him, Defendant refused to provide statements and balance sheets upon request.

20. On October 16, 2018, Ms. Zynko instructed Plaintiff to sign Promissory Notes related to his company loans.

21. Those Promissory Notes were backdated to 2010, 2011, 2012, and 2013.

22. Ms. Zynko informed Plaintiff that she had forgotten to have him sign the documents in previous years, and that they were required to validate the loan repayment.

23. At the time, Ms. Zynko represented the documents and Plaintiff's signature as a requirement for employment, and would not allow Plaintiff to review the documents before signing.

24. Upon later inspection, Plaintiff discovered that the documents presented by Ms. Zynko for his signature included funds never loaned to Plaintiff by the company.

25. Based on the fraudulent Promissory Notes and recent accounting done by Plaintiff, VSS took approximately \$15,795.10 more from Plaintiff's paychecks

than what was owed to the company.

26. On December 19, 2019, Plaintiff was terminated by the company without reason and was evicted from his residence.

27. Since his termination, the company has failed to compensate Plaintiff for owed and unpaid overtime.

28. Plaintiff was a salaried employee, making \$52,000.00 a year based on a 40-hour work week.

29. Plaintiff performed primarily manual labor for VSS, and supervised no employees.

30. Plaintiff did not work for Defendant in an administrative capacity.

31. Plaintiff did not work for Defendant in a professional capacity.

32. Plaintiff worked on average 55-60 hours per week, as Ms. Zynko regularly made Plaintiff work late.

33. Plaintiff was not compensated at all for his time worked over 40 hours each week.

IV. CLAIMS FOR RELIEF
COUNT I: OVERTIME VIOLATION
(FLSA)

34. Plaintiff reasserts and incorporates Paragraphs 1 through 33 of this

Complaint as if fully set forth herein.

35. Defendant was an employer under the FLSA.
36. Plaintiff was a non-exempt employee of Defendant under the FLSA.
37. Plaintiff was not paid his regular wages for any hours worked over forty per week any week of his tenure with the Defendant.
38. Plaintiff was not paid an overtime premium for any hours worked over forty per week any week of his tenure with the Defendant.
39. Defendant intentionally withheld overtime pay from Plaintiff despite his non-exempt status.

COUNT II: FRAUDULENT INDUCEMENT

40. Plaintiff reasserts and incorporates Paragraphs 1 through 39 of this Complaint as if fully set forth herein.
41. Defendant made representations to Plaintiff when instructing Plaintiff to sign the October 2018 agreements.
42. At the time Defendant instructed Plaintiff to sign the October 2018 agreements, Defendant knew its representations were false.
43. Defendant made the October 2018 representations with the intention and purpose of deceiving Plaintiff.

44. Plaintiff relied upon Defendant's representations.
45. Plaintiff has sustained alleged loss and damage as proximate result of the representations having been made by Defendant.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

- A. Declaratory relief;
- B. For a judgment in Plaintiff's favor for unpaid overtime premiums plus interest, liquidated damages equal to the unpaid overtime premiums plus interest, attorney fees, and litigation expenses;
- C. For a judgment in Plaintiff's favor under Georgia law for all amounts improperly deducted from Plaintiff's pay pursuant to the October 2018 notes;
- D. Rescission of the October 2018 promissory notes and repayment of the amounts therein to Plaintiff;
- E. Costs of this action, including litigation expenses and attorney fees; and
- F. For such other and further relief as the Court deems appropriate and just.

Respectfully submitted this 8th day of October, 2020.

THE KIRBY G. SMITH LAW FIRM, LLC

s/Amanda M. Brookhuis
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JURY DEMAND

Plaintiff requests a jury trial on all questions of fact raised by this Complaint.

Respectfully submitted this 8th day of October, 2020.

THE KIRBY G. SMITH LAW FIRM, LLC

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FONT AND POINT CERTIFICATION

The Undersigned counsel for Plaintiff certifies that the within and foregoing COMPLAINT was prepared using Times New Roman, 14-point font in accordance with LR 5.1(B).

Respectfully submitted this 8th day of October, 2020.

THE KIRBY G. SMITH LAW FIRM, LLC

s/Amanda M. Brookhuis
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